

The State Legislatures

RPOS321/RPAD321: State and Local Government

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I. The basic roles and activities of legislators as members of legislatures

- a. **Lawmaking** - encompasses the processes by which proposed laws (called “bills”) are formulated, reviewed and debated, refined and revised, and then adopted.
- b. **Representation** – involves representing the interests of the residents of a legislator’s district (and the businesses and other organizations that employ, serve, represent, etc. those residents) and generally taking care of the district’s interests with respect to such things as state-aid formulas and public works projects.
- c. **Constituent service** (also referred to as “**case work**”) – involves responding to constituents’ requests for information and for help in their dealings with executive branch agencies.
- d. **Oversight** – involves the formal and informal work that legislators, legislative committees and legislative staff organizations do to monitor the implementation and effect of the laws it has enacted.
- e. **Investigations** – are intensive fact-finding efforts (usually assigned to a special committee that is set up for this specific purpose) designed to “get to the bottom” of a specific controversy.

II. The formal powers of the legislature can be grouped into the following five categories:

- a. Constituent powers (Note: this is not the same as the “constituent service” role of legislators. Rather, this is “the power of the legislature to ratify proposed federal constitutional amendments referred to it, propose state constitutional amendments, and convene constitutional conventions.”)
- b. Legislative powers
- c. Electoral powers
- d. Executive powers
- e. Judicial powers

III. How are the State Legislatures like the U. S. Congress?

- a. The U.S. national government and all of the state governments except Nebraska have bicameral legislatures (i.e., legislatures composed of two houses or chambers).

- i. Bicameralism in the United States is unlike bicameralism in most other countries. In most other countries with bicameral legislatures, the upper houses (such as the British House of Lords) have very little power relative to the lower houses (such as the British House of Commons)
 - ii. In the United States, however, the two houses of the bicameral legislatures at both the federal and state levels have virtually all of the same powers with some limited exceptions. One common exception involves the confirmation of appointments by the jurisdiction's chief executive (i.e., the U.S. Senate and the upper houses of most of the state legislatures [including the New York Senate] have the power to confirm certain appointments made by these jurisdictions' chief executives.
 - iii. In a very small number of states this confirmation power is shared with the lower house of the legislative body.
 - iv. Both the U.S. Constitution and most of the state constitutions assign roles to the two houses of their legislative bodies in the impeachment process
- b. In the U.S. Congress and in the 49 states with bicameral legislatures, the upper house is smaller than the lower house but there is a great deal of variation in the relative size of the two houses of these legislatures.
 - i. The U.S. Congress has a 100-member upper house (its Senate) and a 435-member lower house (its House of Representatives).
 - 1. The size of the U.S. Senate is determined indirectly by the provisions of the U.S. Constitution that stipulate
 - a. That "The Senate of the United States shall be composed of two Senators from each State" and
 - b. "that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."
 - 2. The size of the U.S. House of Representatives has been set at 435 members by statute since the enactment of the Apportionment Act of 1911.
 - ii. New Hampshire is the state with the greatest difference in size between its upper and lower houses. It has a 400-member lower house and a 24-member upper house.
 - iii. At the other extreme, there are 4 states in which the upper house is more than one-half the size of the lower house: New Mexico 42 and 70, Colorado 35 and 65, Delaware 21 and 41, and Rhode Island 38 and 75
 - iv. In 16 other states, the lower house is exactly twice as large as the upper house, ranging from Alaska with a 40-member lower house and a 20-member upper house, to Minnesota with a 134-member lower house and a 67-member upper house.
 - 1. In Oregon, for example, two lower house districts are nested within each upper house district.

2. But in New Jersey, the district boundaries for the two houses are the same with one upper house member and two lower house members being elected from each of the legislative districts.
 - v. New York has a 63-member upper house (its Senate) and a 150-member lower house (its Assembly). The size of the Assembly is set at 150 by the New York State Constitution but the size of the New York State Senate is actually variable. The redistricting plan that was adopted by the Legislature in 2012 increased the number of Senate Districts and the number of Senators from 62 to 63
 - vi. For information on the size of the all the state legislatures, see Table 3.3 of the 2019 edition of *The Book of the States* and/or the comparable table in earlier editions of the *The Book of the States*.
- c. In 23 of the states with bicameral legislatures and at the federal level, the presiding officer of the upper house of the legislature (i.e., the State Senate) is an executive branch official – the Vice President at the federal level and the Lieutenant Governor in these 23 states. in New York. According to Table 4.14 in the Book of the States, in California, the Lieutenant Governor presides over the Senate only upon the invitation of the Senate; and in Oklahoma, the Lieutenant Governor presides over the Senate only when desired (By whom?)

IV. How are the state legislatures different than the U. S. Congress?

- a. At the federal level and in most of the states in the United States, the upper house of the bicameral legislature is called the Senate and the lower house is called the House of Representatives but in a small number of states (California, Nevada, New York, and Wisconsin) the lower house is called the Assembly rather than the House of Representatives. The lower house in the New Jersey state legislature is called the General Assembly while in Maryland, Virginia and West Virginia, it is called the House of Delegates.
- b. At the federal level, the legislative body as a whole is called the Congress. In 27 of the states, including New York, the legislative body as a whole is called simply the Legislature. In 15 states, it is called the General Assembly, in Oregon and North Dakota, it is called the Legislative Assembly, and in Massachusetts and New Hampshire it is called the General Court. (NOTE: For the names of all of the legislatures and all of the legislative chambers in the 50 states, see Table 3.1 in the 2019 or the comparable table in earlier editions of *The Book of the States*.)
- c. In the U.S. Congress, "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills" (per the first sentence of Section 7 of Article I of the US Constitution). In New York State, there is no distinction between the Senate and the Assembly in terms of the origination of revenue bills or of any other types of bills. (See Section 12 Of Article II of the NYS Constitution which

provides that "Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.")

- d. More executive branch officials are subject to Senate confirmation at the federal level than in New York State. At the federal level, executive branch agency heads and their top deputies are all subject to U.S. Senate confirmation. In New York State, the heads of most (but not all) executive branch agencies are subject to Senate confirmation but those agency heads' top deputies (i.e., Deputy Commissioners of state executive branch agencies) are not. For example, the NYS Governor's appointment of the state's Budget Director (i.e., The Director of the NYS Division of the Budget is not subject to confirmation by the NYS Senate but the U.S. President's appointment of the equivalent official (i.e., the Director of the U.S. Office of Management and Budget) as are both the Deputy Director and the Deputy Director for Management.
- e. Both houses of the New York State Legislature are made up entirely of single member districts.
 - i. The lower house of Congress is comprised of single member districts but the upper house of Congress, in effect, has multi-member districts since each State has two Senators and both of those Senators are elected by the voters of the entire state.
 - ii. In some of the states in which members of both houses of the Legislature are elected from the same districts, the members of the lower house are, in effect, elected from multi-member districts.
 - iii. What are the comparative advantages and disadvantages of single-member districts and multi-member districts?
- f. Representation in both houses of state legislatures (including New York's) must be based on population since the U. S. Supreme Court says "No" to the "federal analogy." In other words, states are not able to base representation in one house of their legislatures on factors other than population, the way that the US Senate is based on all the states having the same number of Senators.
- g. Five states (Alabama, Louisiana, Maryland, Mississippi, and North Dakota) have 4-year terms for the members of both houses of their legislatures.
- h. 30 states have 4-year terms for the members of their state senates and 2-year terms for the members of their lower houses.
 - i. 12 states (including New York) have 2-year terms for the members of both houses of their legislatures.
 - j. Two states have 2-year terms for their lower houses and a 10-year cycle for its upper houses which results in each senate seat being filled for one 2-year term and two 4-year terms each decade.

- k. For information on the term lengths for the members of the legislatures of all the states, see table 3.3 of the *Book of the States*
- l. Members of the U.S. Congress specialize in particular areas of public policy much more than NYS legislators do so, and Committees are more important in the Congress than in the NYS Legislature.
- m. Seniority is more important in Congress than in the NYS Legislature (but seniority is not as important in Congress as it was historically.)
- n. Party Conference Leaders have greater authority and power in the NYS Legislature than in the US Congress.
 - i. In the New York Legislature, only one leader is elected by each party conference; and that leader appoints all the other leaders of that conference and makes all the committee assignments for the members of that conference. The power of the majority party conference leaders (i.e., the Speaker of the Assembly and the Senate Majority Leader who is usually also designated as the Senate's Temporary President) in this regard is particularly important since these two leaders determine which members will chair which committees in their respective houses.
 - ii. In the US Congress, each party conference elects several leaders thus creating a number of centers of power within each party conference, and the selection of committee chairs (which was historically based on committee seniority) is now done in different ways by the different party conferences with seniority being given some weight but within limits and with more input by the party conferences.
- o. For most of the 1960s, 1970s and 1980s, party discipline was much greater in the NYS Legislature than in the US Congress. Since then there have been several important deviations from this general rule.
 - i. In 1995, Representative Newt Gingrich became the first Republican Speaker of the US House of Representatives in 40 years as a result of his party's surprise victory in the 1994 elections. Gingrich, having for many years observed the strong party discipline and the strong leadership in his home state of Georgia under Tom Murphy, the longtime Democratic Speaker of the Georgia House of Representatives, consciously instituted a strong leadership, strong party discipline system in the US House. After several years, Gingrich was forced to return some of the power that he had amassed to the chairs of the House committees, but party discipline in the House remained stronger than it had been in the past.
 - ii. During the last several years, however, the US House of Representatives' Republican leaders have faced vocal resistance from a block of their members who are now organized as the House Freedom Caucus. The new Democratic majority in the US House of Representatives, which took office in January 2018, may face similar recalcitrance on the part of one or more segments of the House Democratic conference.

- p. Committees and party conferences are important organizing mechanisms in Congress and the state legislatures with the relative significance of each varying from legislature to legislature.
- q. Conference committees are rarely used in the NYS Legislature but they have traditionally been important in the work of the US Congress and in the work of many other state legislatures. (Note: In recent years the differences between the two houses of Congress, on a number of important bills, were worked out in ways other than through the use of conference committees. This appears to be an additional way in which the US Congress is becoming more like the NYS Legislature.)
- r. Virtually all the professional staffers in the NYS Legislature, in effect, work for one or another of the party conferences in the Senate or the Assembly. The US Congress like the NYS Legislature has a large number of partisan professional staffers but it also has several important non-partisan staffs such as the Congressional Budget Office and the Congressional Research Service. The Congress also receives significant professional staff assistance from large nonpartisan staff of the US Government Accountability Office which was established in 1921 as the US General Accounting Office (Question for the instructor: What has been the experience in New York with similar nonpartisan staff entities?)
- s. The minority party and ranking minority members on committees are much less influential in the NYS Legislature than in the US Congress.
- t. Following each decennial census from 1970 to 2010, the NYS Legislature redrew its own districts (i.e., the districts for the State Senate and the State Assembly) as well as the districts for New York State's seats in the US House of Representatives.
 - i. During the long period of divided party control (1975 through 2008 and again from 2011 to 2018), following the decennial censuses of 1980, 1990, 2000, and 2010, the Assembly Democratic Majority deferred to the Senate Republican Majority in the drawing of the Senate District lines; and, the Senate Republican Majority deferred to the Assembly Democratic Majority in the drawing of the Assembly District lines.
 - ii. The result was the adoption of four consecutive bi-partisan gerrymanders in which the Assembly districts were drawn to favor the Democrats and the Senate districts were drawn to favor the Republicans.
 - iii. Leading up to the 2010 Census and the subsequent redistricting, there was a concerted effort by “good government” groups to persuade the incoming Governor and the Legislature to establish an independent districting commission or some other “non-partisan” approach to redistricting. The result was the placement of an “independent redistricting” constitutional amendment on the statewide ballot in November 2014. This proposal split the good government community with Common Cause and NYPIRG opposing the proposal while

Citizens Union and the New York State League of Women Voters supported it. (A link to an August 2014 news article on this “split” is posted in the Blackboard folder on “The Legislature and the Legislative Process.”) The voters of the state approved the proposed constitutional amendment by a vote of 1.7 million for, 1.25 million against, and 966,158 voters choosing not to express an opinion for or against this proposal. (For the substance of this new redistricting process, which is scheduled to be used for the first time following the 2020 Census, see Sections 4, 5 and 5-b of Article III of the NYS Constitution, which were covered in class on March 13, 2019.)

- u. In the US Congress, bills and actions both carry over from Year 1 to Year 2 of a 2-year legislative cycle (called a Congress in Washington and a Legislature in New York State). In New York State, bills carry over from Year 1 to Year 2 but actions do not.
- v. In the US Senate, the Vice President can break a tie vote on a bill. In the NYS Senate, the Lieutenant Governor can break a tie vote on a procedural matter but not on a bill. (This is how the NYS Constitution has been interpreted to date but the NYS Court of Appeals might conceivably decide otherwise if a relevant case in controversy were to reach it for a decision. For example, the NYS Constitution was long interpreted to provide that vacancies in the office of Lieutenant Governor would be filled on an acting basis by the Temporary President of the Senate until the next regular quadrennial election of the Governor and Lieutenant Governor via a joint ballot. But in September 2009, the NYS Court of Appeals, by a 4 to 3 decision, held that the Governor could appoint someone to fill a vacancy in the Lieutenant Governorship. See <https://cityroom.blogs.nytimes.com/2009/09/22/court-upholds-patersons-appointment-of-lieutenant-governor/>)